

Message Text

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PAGE 01 ROME 00418 01 OF 02 092319Z
ACTION L-03

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P 091857Z JAN 78
FM AMEMBASSY ROME
TO SECSTATE WASHDC PRIORITY 9733
AMCONSUL MUNICH PRIORITY

UNCLAS SECTION 1 OF 2 ROME 0418

DEPT FOR L AND EUR
MUNICH FOR MR. CHARIG

E.O. 11652 N/A
TAGS: PGOV, IT
SUBJ: AMBASSADOR SUMMONED TO COURT IN CIVIL CITATION

1. SUMMARY: MFA HAS TRANSMITTED CITATION BY ATTORNEY REPRESENTATING CHURCH OF THE NAZARENE IN REGISTRATION TAX DISPUTE WITH ITALIAN GOVERNMENT. CITATION SUMMONS AMBASSADOR GARDNER TO TESTIFY IN COURT ON JANUARY 16, 1978. ACTION REQUESTED: GUIDANCE ON REPLY TO MFA AND COURT. END SUMMARY.

2. BY A NOTE VERBALE OF JANUARY 2, THE MFA TRANSMITTED A CITATION MADE NOVEMBER 29, 1977 BY ATTORNEY GIACOMO ROSAPEPE, LEGAL REPRESENTATIVE OF SALVATORE SCOGNAMIGLIO, WHO IN TURN IS REPRESENTATIVE OF THE CHURCH OF THE NAZARENE. THE CITATION SUMMONS FINANCE MINISTER PANDOLFI, INTERIOR MINISTER COSSIGA, FOREIGN MINISTER FORLANI AND AMBASSADOR GARDNER TO APPEAR BEFORE THE TRIBUNAL OF ROME ON JANUARY 16, 1978 TO TESTIFY ON CERTAIN QUESTIONS RELATING TO A REGISTRATION TAX DISPUTE BETWEEN THE ITALIAN GOVERNMENT AND THE CHURCH OF THE NAZARENE.

3. TEXT OF EMBASSY'S TRANSLATION OF NOTE VERBALE FOLLOWS.

BEGIN TEXT: MINISTRY OF FOREIGN AFFAIRS, NO. 022/ROME, JANUARY
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2, 1978- NOTE VERBALE.

THE MINISTRY OF FOREIGN AFFAIRS HAS THE HONOR TO TRANSMIT TO THE AMERICAN EMBASSY, IN CONNECTION WITH THE REQUEST MADE BY THE OFFICE OF THE PUBLIC PROSECUTOR SITTING WITH THE TRIBUNAL OF ROME AND IN COMPLIANCE WITH OFFICIAL REQUIREMENTS, THE ATTACHED SUMMONS FROM THE GENERAL BOARD OF THE CHURCH OF

THE NAZARENE, A CORPORATION WITH PATRIMONIAL PROPERTY OF THE CHURCH OF THE NAZARENE, IN THE PERSON OF ITS LEGAL REPRESENTATIVE SALVATORE SCOGNAMIGLIO, AND ADDRESSED TO HIS EXCELLENCY THE AMBASSADOR PRO TEMPORE OF THE UNITED STATES OF AMERICA IN ROME. THE MINISTRY OF FOREIGN AFFAIRS TAKES THIS OPPORTUNITY TO RENEW TO THE AMERICAN EMBASSY THE ASSURANCES OF ITS HIGHEST CONSIDERATION. END TEXT.

4. TEXT OF EMBASSY TRANSLATION OF CITATION FOLLOWS:

BEGIN TEXT:CIVIL COURT OF ROME - SUMMONS

IN THE INTEREST OF THE GENERALBOARD OF THE CHURCH OF THE NAZARENE, A CORPORATION WITH PATRIMONIAL PROPERTY OF THE CHURCH OF THE NAZARENE, IN THE PERSON OF ITS LEGAL REPRESENTATIVE SALVATORE SCOGNAMIGLIO, REPRESENTED AND DEFENDED, BY VIRTUE OF A POWER OF ATTORNEY SET FORTH HEREINBELOW, BY ADVOCATE GIACOMO ROSAPEPE, WITH OFFICE IN ROME AT VIA ANGIOLO CABRINI 22, WHERE THE AFORESAID CORPORATION IS LOCATED, WHEREAS:

- THE MINISTRY OF FINANCE OF THE ITALIAN REPUBLIC ON BEHALF OF THE LOCAL OFFICE OF THE PUBLIC ACTS REGISTER IN FLORENCE, BY AN INJUNCTION (FORM 13) SERVED ON NOVEMBER 11, 1977, ORDERED, UNDER PENALTY OF A WRIT OF EXECUTION, THE UNDERSIGNED CORPORATION, THAT TAKES ON THE OBLIGATION ALSO FOR THE LIQUIDATED "IL NAZARENO" LIMITED PARTNERSHIP, TO PAY THE SUM OF 50,544,000 LIRE PLUS COSTS, UNCLASSIFIED

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STATING THAT: "EVEN THOUGH THE PURPOSE OF THE DONEE IS THE PRACTICE OF RELIGION, TO BE TREATED FOR TAX PURPOSES AS WELFARE INSTITUTIONS, EDUCATIONAL INSTITUTIONS, ETC., PURSUANT TO ART 12 OF ROYAL DECREE NO. 289 OF FEBRUARY 28, 1930, IT IS NOT INCORPORATED AS A RELIGIOUS ENTITY IN ACCORDANCE WITH THE ITALIAN LAWS AND IS THEREFORE NOT ENTITLED TO ENJOY THE TAX EXEMPTION PROVIDED FOR BY ROYAL DECREE LAW NO. 380 OF APRIL 9, 1925, EXTENDED TO FOREIGN ENTITIES PURSUANT TO LAW 59/53"; THIS HAVING BEEN STATED AND CONSIDERING THAT:

A. THE DED SUBJECTED TO UNDUE TAXATION WAS STIPULATED IN ACCORDANCE WITH THE PROVISIONS OF THE AFOREMENTIONED LAW OF 1930 AND IN CORRECT CONFORMANCE TO LAW NO. 59 OF FEBRUARY 10, 1953;

B. IN STRICT COMPLIANCE WITH THE PRINCIPLES SET IN THE LATTER LAW, THE FOLLOWING IS WRITTEN IN PRESIDENTIAL DECREE OF OCTOBER 8, 1964 THAT GRANTED THE AUTHORIZATION TO ACCEPT THE DONATION REFERRED TO IN THE RAGONA INSTRUMENT OF SEPTEMBER 23, 1961, NO. 15809: HAVING SEEN TELETYPE-WRITTEN MESSAGES OF SEPTEMBER 21, 1962, AUGUST 20, 1963, NOVEMBER 16, 1963 AND MAY 20, 1964 FROM THE MINISTRY OF FOREIGN AFFAIRS;

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AMCONSUL MUNICH PRIORITY

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C. THE FACT THAT THE ITALIAN PUBLIC ADMINISTRATION INSISTS ON AN ABSOLUTELY INCORRECT AND ACTUALLY MISTAKEN TAX CLAIM ALSO REFERRING TO, SO TO SAY, FIRM DECISIONS OF THE JUDICIAL AUTHORITIES THAT HAVE NEGLECTED TO EXAMINE THE INTERNATIONAL SPECTS ON WHICH THE TAX EXEMPTION IN QUESTION IS BASED, AND MORE PRECISELY ART. II, PARAGRAPHS 2 AND 3, ART. VII, PARAGRAPH 1, SUBPARAGRAPH B, ART IX, PARAGRAPH 1, SUBPARAGRAPH B. A. OF THE TREATY OF FRIENDSHIP BETWEEN THE ITALIAN REPUBLIC AND THE UNITED STATES OF AMERICA, RATIFIED BY LAW NO. 385 OF JUNE 18, 1949, PRECISELY IN CONNECTION WITH LAW NO. 59 OF 1953 AND ART. 16 OF THE REGULATION WITH LAW NO. 59 OF 1953 AND ART. 16 OF THE REGULATIONS (FOR THE IMPLEMENTATION) OF THE LAW, THE PROVISIONS ON THE LAW IN GENERAL OF THE CIVIL CODE IN FORCE, MEANS APPLYING A DISCRIMINATORY TREATMENT TO AN AMERICAN ENTITY TO WHICH, LIKE FOR OTHER SIMILAR ONES, ON SEVERAL OTHER OCCASIONS THE PUBLIC ADMINISTRATION HAD GRANTED THE TAX BENEFITS DUE, DISREGARDING AT THE SAME TIME THE TREATMENT OF RECIPROCITY PROVIDED FOR BY THE SAID TREATY; AND FOR THESE REASONS AND IN ORDER TO AVOID POSSIBLE AND EXTREMELY GRAVE POLITICAL, INTERNATIONAL, JURIDICAL AND ADMINISTRATIVE IMPLICATIONS CONNECTED WITH SUCH AN ILLEGAL AND ANOMALOUS BEHAVIOR OF THE PUBLIC ADMINISTRATION OF THE ITALIAN REPUBLIC, A RELATIONSHIP THE UNITED STATES FAUTHFULLY OBSERVES.

SUMMONS

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- THE MINISTER OF FINANCE, IN THE PERSON OF HON. FILIPPO
PANDOLFI, DOMICILED AT THE OFFICE OF THE STATE ATTORNEY GENERAL;

- THE MINISTER OF INTERIOR, HON. FRANCESCO COSSIGAN
DOMICILED AS ABOVE;

- THE MINISTER OF FOREIGN AFFAIRS, HON. ARNALDO FORLANI,
DOMICILED AS ABOVE;

- THE AMBASSADOR OF THE UNITED STATES OF AMERICA, DR.
RICHARD GARDNER, DOMICILED OWING TO HIS APPOINTMENT IN ROME,
AT VIA VENETO, TO APPEAR BEFORE THE COURT OF ROME, SECTION AND
INVESTIGATING JUDGE STILL TO BE DESIGNATED, AT THE HEARING OF
JANUARY 16, 1978 AND TO HEAR THE FOLLOWING CONCLUSIONS ACCEPTED:

1. SINCE THE GENERAL BOARD OF THE CHURCH OF THE NAZARENE,
REPRESENTED AS INDICATED HEREIN, IS ENTITLED TO ENJOY THE
TAX TREATMENT EVINSAGED BY LAW NO. 59 OF 1953 IN CONNECTION WITH
THE RECIPROCITY GRANTED BY THE UNITED STATES OF AMERICA
PURSUANT TO THE TREATY OF FRIENDSHIP BETWEEN THE ITALIAN REPUBLIC
AND THE UNITED STATES OF AMERICA RATIFIED BY LAW NO. 385 OF
JUNE 18, 1949;

2. SINCE THE PLAINTIFF SUSTAINED CONSIDERABLE DAMAGE AS A
RESULT OF THE DISCRIMINATORY TREATMENT IT HAD BEEN THREATENED
WITH, APPROPRIATING AND HAVING ON HAND FOR OVER 10 YEARS A
LARGE SUM NOT DUE TO THE ITALIAN PUBLIC ADMINISTRATION, BE THE
LATTER SENTENCED TO PAY THE DAMAGES THAT WILL BE ASSESSED
IN DUE COURSE;

3. SUSPEND THE EXECUTION OF THE INJUNCTION;

4. SENTENCE THE DEFENDANT MINISTRIES, EXCEPT FOR THE EMBASSY
OF THE UNITED STATES OF AMERICA, TO THE PAYMENT OF COSTS AND FEES
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FOR THIS LAWSUIT AND OF ANY OTHER PREVIOUS LEGAL COSTS BORNE
OR STILL TO BE BORNE; AND FOR THIS PURPOSE INVITES THE MINISTER
OF FINANCE, THE MINISTER OF INTERIOR, THE MINISTER OF FOREIGN
AFFAIRS, REPRESENTED AND DOMICILED AS INDICATED ABOVE, AND THE
AMBASSADOR OF THE UNITED STATES OF AMERICA, DR. RICHARD
GARDNER, TO APPEAR BEFORE THE COURT WITHIN THE TIME LIMIT
PRESCRIBED BY THE LAW, WARNING THEM THAT, SHOULD THEY FAIL
TO APPEAR, PROCEEDINGS WILL BE CONDUCTED IN ABSENTIA.

WITH THE UNDERSTANDING THAT DOCUMENTS WILL BE PRODUCED
AND PROPOSALS MADE FOR THE EXAMINATION OF WITNESSES AND THE
INTERROGATION OF THE PARTIES.

ROME, NOVEMBER 29, 1977

FIRST SIGNATURE ILLEGIBLE - (SGD) SALVATORE SCOGNAMIGLIO

I HEREBY APPOINT ADVOCATE GIACOMO RISAPEPE TO REPRESENT ME
AND DEFEND ME IN THIS LAWSUIT WITH ALL THE FULLEST LEGAL POWERS,
INCLUDING THE POWER TO ARRIVE AT A SETTLEMENT AND EFFECT A COMPOSITION,

AND CHOOSE TO BE DOMICILED AT HIS OFFICE IN ROME, AT VIA ANGIOLO
CABRINI 22, ROME, NOVEMBER 29, 1977 (SGD) SALVATORE SCOGNAMIGLIO.
END TEXT

5. ACTION REQUESTED: GUIDANCE ON REPLY TO MFA AND POSSIBLE
ACTION TO BE TAKEN WITH REGARD TO COURT.GARDNER

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